

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)			
)			
Petition of AT&T Inc. for Interim	)	CC	Docket	No.
08-152				
Declaratory Ruling and Limited Waivers)			
Developing a Unified Intercarrier	)	CC	Docket	No.
01-92				
Compensation Regime`)			
In the Matter of High-Cost Universal Service	)	WC	Docket	No.
05-337				
Support)			
Federal-State Joint Board on Universal	)	CC	Docket	No.
96-45				
Service)			
Intercarrier Compensation for ISP-Bound)		WC	Docket	No. 99-68
Traffic)			
Establishing Just and Reasonable Rates for	)	WC	Docket	No.
07-135				
Local Exchange Carriers)			
In the Matter of IP-Enabled Services	)	WC	Docket	No.
04-36				

Introduction

The Pennsylvania Public Utility Commission (PaPUC)

The Pennsylvania Public Utility Commission (PaPUC) appreciates the opportunity to file these Comments (the PaPUC

Comments) with the Federal Communications Commission (FCC). These PaPUC Comments respond to the FCC Notice on the Petition of AT&T Services, Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and removal of the Enhanced Service Provider (ESP) Exemption for IP-enabled services filed at WC Docket No. 08-152 (the AT&T Petition). AT&T filed the AT&T Petition on July 23, 2008. The FCC posted notice of the AT&T Petition on July 24, 2008 at DA 08-1725 establishing a Comment and Reply Comment deadline of August 14, 2008 and August 25, 2008, respectively. The FCC extended the Comment deadline to August 21, 2008 by order issued August 13, 2008 at DA 08-1904.

As an initial matter, the PaPUC Comments should not be construed as binding on the PaPUC or any individual Commissioner in any proceeding pending before the PaPUC. The PaPUC Comments could also change in response to subsequent events, including subsequent state or federal developments and review of the other Comments.

Summary of the AT&T Petition and Ex Parte Filings

The AT&T Petition is part of a flurry of multiple documents recently submitted in multiple dockets by multiple incumbent telephone companies (ILECs), competitors, or trade associations addressing intercarrier compensation reform (the Reform Pleadings).¹ The AT&T Petition asks the FCC to remove the Enhanced Service Provider (ESP) exemption from access rate payments for Voice over Internet Protocol (VoIP) and to address needed compensation reform.

The AT&T Petition asks the FCC to mandate a uniform Minute of Use (MOU) rate for terminating access needed to connect long-distance calls to a local carrier's network on the Public Switched Telecommunication Network (PSTN). Any incumbent carrier that

¹ *In Re: Intercarrier Compensation*, Docket No. CC 01-92, *AT&T Letter* dated July 17, 2008 filed in CC Docket No. 01-92 (Intercarrier Compensation), WC 05-337 (High-Cost Universal Service); CC Docket No. 96-45 (Universal Service); WC Docket No. 99-68 (Compensation for ISP-Bound Traffic); WC Docket No. 07-135 (Local Exchange Rates). In addition, see *AT&T Ex Parte Notice* dated July 18, 2008 (the Three Filings notice); *AT&T Ex Parte Notice* dated July 24, 2008 (the Summary of the Three Filings notice); *AT&T Ex Parte Notice* dated August 5, 2008 (the Comprehensive Reform notice). Ancillary Ex Parte notices were filed as well. See Letter Notice of Verizon, AT&T, CTIA, Global Crossing, National Association of Manufacturers, T-Mobile et al. dated August 6, 2008 addressing the Vonage Preemption Decision and Intercarrier Compensation (the “*Two Proposals*” Letter); Embarq Ex Parte notices dated July 30, 2008, July 31, 2008, and August 1, 2008 supporting intercarrier compensation reform but not the AT&T Petition (the “*Embarq Opposition Letters*”); the Ex Parte notices of Core Communications, Inc. dated July 25, 2008 and July 28, 2008 addressing the *Core Remand Decision* at 2008 WL 2649636 (the “*Core Remand*” Letters).

loses revenues from these reforms would be compensated with support provided by an increased Subscriber Line Charge (SLC) up to \$6.50, an increased originating access rate of \$.0095, and residual funding from the Federal Universal Service Fund (FUSF).

The subsequent *Two Proposals Letter* filed by multiple parties supports this intercarrier compensation reform proposal. They also make two additional requests. First, the filers want the FCC to establish a national compensation rate of \$.0007 per MOU for the transport and termination of Internet Service Provider (ISP)-bound traffic. The filers also want the FCC to reaffirm that the Vonage Preemption Order which restricted state regulation of Internet Protocol (IP) telephony encompassed wireline IP telephony as well.

The Reform Pleadings collectively propose, oppose, or provide background information on AT&T's comprehensive solution. They largely support the AT&T claim that intercarrier compensation reform will better reflect technological change and prevent the rate arbitrage attributed to the legacy practice of establishing disparate carrier access rates for virtually identical services.

Summary of the PaPUC Comments

The PaPUC has concerns with parts of this proposal. Those concerns reflect the previously filed Comments and Reply Comments in the Missoula Plan proposals currently pending before the FCC in Docket CC 01-92. The PaPUC reiterates and incorporates those concerns and builds upon them in this Comment.

One concern is the legal basis for federalizing all access rate-making authority at the FCC. While some language in the AT&T Petition disclaims federal preemption, a solution that voluntarily sets intrastate access rates at the interstate level begs the question of what will happen if a state refuses to follow this proposal. Moreover, there is no attention given to intrastate regulatory and ratemaking implications following a voluntary state decision to opt-in to this federal solution to setting intrastate rates.

The PaPUC is particularly concerned with the potential for additional local rate increases beyond the rise in federal SLC rates for states with price cap regimes, like Pennsylvania. The proposal does not explain what happens in states where carriers have approved

alternative regulation plans which contain “change of law” or “exogenous event” factors in their respective price cap formulas. Those clauses could require a state commission to impose local exchange service rate increases to provide for the recovery of any decreased federal access charge revenues. This eventuality is of particular concern for “average schedule” rural incumbent local exchange carriers (RLECs).

One other legal concern is what happens under the proposed “federal benchmark mechanism” if the benchmark rate is higher than the \$18 benchmark rate for basic residential local exchange service in the areas served by rural ILECs in Pennsylvania. This concern is heightened if the increased surcharges are not included in the overall rate. Pennsylvania has witnessed telephone penetration rate declines after the FCC’s CALLS Order.² The imposition of increased SLCs or excluding SLCs from an overall rate calculation still results in increased rates. Increased rates impact the ability to buy basic telephone service, especially at lower-income levels.

² *In re Access Charge Reform et al.*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, (FCC Rel. May 31, 2000), Sixth Report and Order in Docket Nos. 96-262 and 94-1 et al., FCC 00-193, 15 FCC Rcd 12692 (the *CALLS Order*).

The PaPUC questions reliance on an outmoded pricing structure premised on outdated copper-analog networks in which distance mattered more than on modern networks. The Petition fails to explain why an MOU approach which reflects a distance-sensitive approach is relevant to reforming a network in which fiber-digital technology makes distance irrelevant,³ particularly given the emergence of Internet Protocol (IP), and the proliferation of competition.

The PaPUC has concerns about the continued reliance on end-user SLCs collected from stand-alone narrowband voice service. Many other services are already provided over a modernized PSTN, including DSL service and special access. The PaPUC is concerned about using the FUSF to support compensation reform, particularly if the FUSF is used only if SLCs and originating access rate increases on narrowband voice service fail to generate enough money.

The PaPUC thinks that the FCC should consider expanding the revenues that fund carrier reforms beyond narrowband voice service. Regulators, industry, and consumers alike recognize the need to move

³ Francis Caircross, *The Death of Distance*, (Harvard Business School Press: 2001); Accord, *In re: Inter-carrier Compensation*, FCC Further Notice of Proposed Rulemaking (CC Docket No. 01-92: March 3, 2005).

“away from the PSTN business model of the past.”⁴ There is little disagreement that the PSTN provides any number of special access or IP-enabled, video, or internet access services. Many of these services generate revenues in addition to narrowband voice service. The AT&T Petition contains no proposal to allocate any portion of the overall costs for these interstate reforms to other interstate services. Those interstate services also need access to the PSTN regardless of whether the PSTN is circuit-switched or based on digital packet transmission technologies.

The PaPUC suggests that the FCC place less emphasis on SLCs and terminating rate increases for narrowband voice service. The FCC should focus more attention on the overall allocation of the costs for interstate reforms to interstate services and revenues that need access to the PSTN. Revenues from those services could be used to offset intercarrier compensation reform costs.

The PaPUC also suggests that the FCC should consider other funding approaches that are more technologically reflective of distance-

⁴ *In re: Intercarrier Compensation*, CC Docket No. 01-92, AT&T Ex Parte Letter dated July 17, 2008, p. 1.

agnostic fiber-digital networks compared to distance-sensitive copper-analog networks. The PaPUC questions why the FCC would premise interstate reforms necessitated by technological change through perpetuating an outdated pricing structure.

The PaPUC notes that one approach could be the use of flat-rate unlimited “connection charges” in which all end-users pay a flat rate for access to advanced Voice-Data-Video (VDV) services. Another approach could be reliance on a “number based” approach in which a flat-rate would be imposed on all numbers, including ENUMs⁵ when that become necessary, compared to perpetuating the copper-analog focus on narrowband voice service to fund all the costs for reform.

The PaPUC also suggests that more creative solutions may enhance support for reforms by the reimbursing carriers and the state commissions. Contributors and regulators are less inclined to challenge an intercarrier compensation solution that avoids

⁵ ENUM means Electronic Numbering, a standard (RFC 2916) from the Internet Engineering Task Force (IETF) for a DNS-based (Domain Name Server) method for mapping telephone numbers to URLs (Uniform Resource Locations), i.e., Web addresses and, ultimately, to IP addresses. This approach is more consistent with recent provider efforts to provide “one number” services, such as T-Mobile’s blended use of narrowband voice technology and WI-FI technology in their wireless service.

federalizing rate-making authority. If intercarrier compensation reform is necessary due to technological change and the proliferation of competitors and services on the PSTN, it follows that those services and the accompanying revenues are part of the funding solution for intercarrier reform.

The costs for reform can be narrowed with an expanded view of what revenues and services are actually being provided over the carriers' PSTN. The base of revenues used to collect an assessment on any fund used to underwrite reform should narrow the end-users' cost. Finally, this approach would represent a major reformation in the FCC's own traditional preference for using end-user SLCs and access rates increases applied only to narrowband voice service, as though no other services were, and are, being provided over a modernized PSTN. It is counterintuitive to have declining economic costs for access because of technological innovation, while imposing potentially higher SLC charges on end-users who continue to rely on legacy copper-based voice telephony services.

The PaPUC is concerned about the proposal to remove the Enhanced Service Provider (ESP) exemption from access rate charges

for Voice over Internet Protocol (VoIP) services. The PaPUC suggests that there are major missing links between the selective imposition of telecommunications obligations on VoIP service as though it were telecommunications and the inference from past FCC actions that the states may lack jurisdiction over VoIP traffic that terminates at the PSTN.⁶ These missing links are particularly evident in preempting state authority over VoIP services on the ground that the traffic cannot be jurisdictionally separated but then imposing telecommunications obligations, including this proposal to impose access rates, on the ground that the traffic is severable. The proposal to impose access rates on VoIP service, a form of IP-enabled service, compared to IP-enabled video or data (Internet) service indicates that IP traffic can be separated and identified for collecting access revenues.⁷ Moreover, this

⁶ Verizon's request to "reaffirm" the FCC's preemption of all VoIP telephony in their Ex Parte Letter is misleading. The *Comcast IP Phone* decision and its progeny hold that the FCC's *Vonage Preemption Order* extended only to "nomadic" VoIP service, and then only to certification and 911 compliance. The *Vonage Preemption Order* never included general consumer protections, public safety, or the need to support ancillary public safety or services such as TRS, USF, and 911. This sort of misrepresentation does little to promote a clear understanding of what are the root causes of, and supports the need for, compensation reform. *Compare Comcast IP Phone*, Case No. 06-4233-CV-C-NKL (WD Mo. January 28, 2007) with *Verizon Ex Parte Letter* dated August 6, 2008 p. 2.

⁷ It is also worth noting that the differing packets needs of voice, data, and video warrant identification, and prioritization, as well. Edward R. Felton, *Nuts and Bolts of Network Neutrality*, 24th Annual Institute on Telecommunications Policy, (Practicing Law Institute, 2007: 317-337).

proposal's recognition of the ability to jurisdictionally separate this VoIP traffic is more consistent with the FCC's recognition of voice traffic severability in the *June 2007 VoIP USF Order*. This is different than the belief that IP traffic, including VoIP, cannot be subject to joint jurisdiction because the traffic cannot be severed.⁸

The PaPUC supports comprehensive reform but questions the need for a drastic reformation of all federal intercarrier compensation policies. A solution focused only on reciprocal compensation for dial-up internet calls may better address the federal court's frustration with the failure to explain why the FCC federalized reciprocal compensation rates for dial-up internet calls in the first place as set out in the *Core Decision*.⁹

Comments of the PaPUC

⁸ The recognized ability to identify, prioritize, and allocate speeds to IP packets, packets used to provide digital voice, data, and video service, rests on technological progress in the ability of IP "headers" charged with delivering IP "payload" (voice, data, and video). The FCC's NOPR identified Cisco routers able to download the Library of Congress in 3.5 seconds. Headers are a necessity given the differing IP needs of voice, data, or video service. See Edward R. Felton, *Nuts and Bolts of Network Neutrality*, 24th Annual Institute on Telecommunications Policy, (Practicing Law Institute, 2007: 317-337).

⁹ *Core Communications Notice of Ex Parte*, CC Docket No. 99-68 and WC Docket No. 01-92, Letter dated July 25, 2008, Attachment.

The AT&T Petition raises legal, technological, economic, public policy, and equity issues in the understandable rush to reform intercarrier compensation in response to the federal court remand of the *Core Decision*.¹⁰ The PaPUC does not support a rushed decision if it imposes an intercarrier compensation regime that raises more legal, technological, public policy and equity concerns than it resolves. As currently proposed, the AT&T Petition appears to do just that.

From a legal perspective, the proposed AT&T Petition would federalize all interstate and intrastate access rate-making authority at the FCC. AT&T and the Reform Letters fail to explain the legal basis for rewriting Section 251(b)(5) of Telecommunications Act of 1996 (TA-96), the provision governing state authority to set intrastate rates for intrastate services. The AT&T Petition also does not explain how federalization of intrastate ratemaking authority is consistent with

¹⁰ Core Communications Ex Parte letter dated July 25, 2008 Attachment, *In Re: Core Communications, Inc.* 2008 WL 2649636 (C.A.D.C.); *In re: Intercarrier Compensation*, Docket No. 01-92, *AT&T Ex Parte Letter* dated July 17, 2008, p. 17 (AT&T is concerned that the FCC's failure to address intercarrier compensation, either separately or comprehensively, will vacate the FCC's ISP-bound traffic compensation structure and "throw open the door" to renewed regulatory arbitrage by CLECs).

Sections 252(d)(2), Section 152(b), Section 201(b), and the universal service provisions of Section 254.¹¹

The federalization of access rate-making authority relies on the faulty preemption logic rejected by the federal courts in the *Comcast IP Phone v. Missouri Public Service Commission* decision at Case No. 06-4233-CV-C-NKL (WD Mo. January 28, 2007).¹² Reliance on the FCC's express forbearance authority to overturn another express provision granting authority to the states may come close to violating a dormant prohibition against delegation of legislative authority, as opposed to implementation authority, to federal agencies.¹³

The PaPUC is very concerned that federalization will require substantial increases in the local service rate for narrowband voice service. The PaPUC has concerns about those increases in states with price-cap regimes, particularly Pennsylvania, if reform means carriers

¹¹ *In Re: Inter-carrier Compensation*, Docket No. 01-92, Pennsylvania Public Utility Reply Comments (February 1, 2007), pp. 3-17.

¹² *In Re: Inter-carrier Compensation*, Docket No. 01-92, Pennsylvania Public Utility Reply Comments (February 1, 2007), pp. 3-17.

¹³ *Carter v. Carter Coal Company*, 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160 (1935). While this limitation is little used today, the rule serves to effectively limit agency authority. Kenneth Culp Davis, *Administrative Law*, §2.02 (West Publishing, 1972: 28-29). This may become particularly relevant if an agency is elevating one provision of a statute to overturn other express provisions of a statute.

can invoke a “change of law” or “exogenous events” clause in their approved price cap alternative regulation plans to secure dollar-for-dollar compensation for federal reforms in local rates.

The PaPUC has made extensive intrastate access charge reforms costing more than \$1 Billion in magnitude and direction as was previously explained in the PaPUC’s comments on the Missoula Plan proposals.¹⁴ The PaPUC is also governed by Pennsylvania law that binds the PaPUC to further reduce intrastate carrier access rates only “on a revenue-neutral basis.”¹⁵ If the AT&T proposals prevail, the PaPUC may be faced with the unenviable task of having to conduct a “revenue neutral” pass through of ILEC intrastate access rate reduction to basic local exchange service rates. Federal preemption of intrastate ratemaking is not a principle that has been condoned, and should not be lightheartedly applied in the instant proceeding.

Louisiana v. FCC, 476 U.S. 355, 368, 90 L.Ed. 369 (1986).

The PaPUC is aware of the AT&T Petition’s claim that the proposal does not result in exercising jurisdiction over intrastate access

¹⁴ *In re: Intercarrier Compensation*, CC Docket No. 01-92 Reply Comments of the PaPUC, (February 1, 2007), p. 27.

¹⁵ See 66 Pa. C.S. § 3017(a).

rates. AT&T claims that the provider's decision to lower their intrastate access rates is a voluntary one but that the compensation for that decision is a federal one.¹⁶ While a voluntary proposal to lower intrastate access rates is not strictly tantamount to preemption, there may be an indirect preemption in the proposal's plan to lower intrastate terminating access rates to a rate that is "equal to or less than" the interstate rate.¹⁷

A properly structured voluntary participation by state commissions avoids the inevitable legal appeals following any preemption action. State commissions would find a voluntary opt-in particularly palatable if the state retains authority to ensure the flow-through of all access rate reforms. This is also more probable if SLCs and originating rate access increases are devices of last, not first, resort. Acceptance is more likely if carriers cannot seek "revenue neutral" recovery under state law, and states with higher intrastate access rates see a reduction in their FUSF support funding including, possibly, Schools & Libraries, Rural Health, and Lifeline, but, most certainly, High-Cost funding.

¹⁶ AT&T Petition, p. 10, n. 27.

¹⁷ AT&T Petition, p. 5.

A final legal concern is the benchmark's operation. The proposal does not indicate what happens if the state's benchmark rate, as in Pennsylvania's case of \$18 for residential service by rural ILECs, is lower than the contemplated federal benchmark rate. Moreover, the benchmark proposal is premised on access lines. However, the trigger date for counting the access lines and a true-up to reflect customer migration from an ILEC's wireline service to its wireless affiliate is not addressed. Moreover, there is no true-up component that would reduce the support to reflect customer migration from an ILEC.

From a public policy perspective, the PaPUC is concerned about the lack of consideration given to other equally effective ways to fund intercarrier compensation reform. The AT&T Petition does not address use of a flat-rate unlimited usage "connection-based" compensation structure. A flat-rate unlimited usage "connection-based" charge on consumers avoids the costs of monitoring and ensuring the payment of "metered" minutes, a traditional given in the MOU regime. A flat-rate unlimited usage "connection-based" approach also better reflects the distance-agnostic nature of IP-enabled services and the "bundled" VDV services provided by cable and telephone companies.

The PaPUC notes that the AT&T Petition has not considered the use of a “number-based” approach. A “number-based” approach to underwriting reform would spread the costs over a far larger contribution base compared to end-user SLCs and originating access rate increases on primarily narrowband voice service. A “number-based” approach could allocate costs to every number used on the PSTN which, when appropriate, will eventually have to include ENUMs.

In addition, the AT&T Petition has not addressed the expanded use of the PSTN to provide any number of services, particularly IP-enabled services, over the PSTN. The PaPUC suggests that reform should consider expanding the definition of what “interstate revenues” or “interstate services” are being provided over the PSTN. This, in turn, could also expand the contribution based needed to underwrite the costs for reform.

The PaPUC has equitable concerns as well. One equitable concern is the proposal to *increase* the Average Traffic Sensitive (ATS) originating access rates on an MOU basis. The AT&T Petition will compensate incumbent carriers for revenue losses attributable to

reforms made necessary because of technological change and competitive entry.

The AT&T Petition does not explain why use of a distance-sensitive compensation structure (MOUs), which reflects the outdated copper-analog network, must become the basis for compensation for distance-agnostic fiber-digital networks that use Internet Protocol (IP). IP-enabled networks provide far more services at a fraction of the cost for narrowband voice on the traditional copper-analog network. The failure to explain why a copper-analog pricing model is appropriate is also a problem because recovery appears to be in perpetuity, but only for ILECs.¹⁸

The AT&T Petition relies on rates already established in the CALLS Order to support this proposal. The CALLS Order established three tiers of rates for originating access. The first rate of \$.0055 per MOU applied to Regional Bell Operating Local Exchange Carriers (RBOC LECs). This includes AT&T, since AT&T merged with SBC,

¹⁸ The AT&T Petition does not address access recovery for wireless or cable telephony providers. The proposal fails to include these carriers although they will most likely have to pay to support compensation for ILEC reforms. This was a Missoula Plan concern.

and Verizon because Verizon was an original RBOC LEC. The second rate was \$.0065 per MOU for all other price cap companies. The third and highest rate was \$.0095 per MOU. This was set for “low density price cap” carriers.

The PaPUC questions the wisdom of advancing reforms by imposing the *highest* originating access rate, the rate established for low-density price cap carriers, to offset revenue losses attributable to access rate reform. This problem is particularly acute if the highest rate will now apply to RBOCs and others that already have a lower rate.

The AT&T Petition does not explain why this low-density price cap rate, a rate established for more rural carriers, should be the rate for RBOCS like Verizon and AT&T, carriers already subject to TELRIC. The AT&T Petition fails to explain how increasing an RBOC’s originating access rates using a potentially outmoded compensation regime and setting it at the highest originating access rate under that regime, notwithstanding the considerable differences in population and cost, can be justified on the basis of declining economic cost for access services because of continuous technological innovation.

The second equitable concern is the excessive reliance on SLCs. The AT&T Petition proposes three funding sources for compensation i.e., SLCs, originating access rate increases, and FUSF, in that order. The AT&T Petition relies on SLCs, originating access rate increases, and FUSF¹⁹ in that order. The proposal would use a FUSF assessment but only if SLCs and originating access rate increases fail to provide enough money.

The PaPUC is concerned about this continued reliance on end-user SLCs imposed on narrow-band voice service as the preferred source for funding intercarrier compensation reform. Compensation reform is needed because a modernized IP-enabled PSTN can provide bundles of Voice-Data-Video services following the deployment of fiber networks. The providers' continuing reliance on the PSTN is not altered because that PSTN is evolving from a circuit-switched architecture into an architecture centered on digital packets. The use of SLCs would allocate the vast bulk of reform costs on narrowband

¹⁹ The AT&T Petition raises serious questions about the failure to consider expanding the contribution to the costs for these reforms from the interstate services that generate interstate revenues. Those services already support the FUSF.

voice customers, and primarily residential and small business customers at that. There seems to be no recognition that many other IP-enabled services, like VoIP, Video, Data (Internet Service), and even special access also use the PSTN.

The reliance on SLCs will increase local rates. This adversely impacts telephone penetration rates. In that regard, the PaPUC disputes the AT&T Petition's claim that penetration rates for narrowband voice service have increased since implementation of the CALLS proposal since 2001.²⁰

The PaPUC previously noted that the November 2006 Universal Service Monitoring Report showed that the penetration rate for telephone service declined from 97.85 to 97.2% from 2001 through 2004. Delaware, the District of Columbia, Kentucky, Maryland, Virginia, and West Virginia also experienced similar declines in telephone penetration rates as well.²¹

²⁰ AT&T Petition, p. 12, fn. 129.

²¹ *Universal Service Monitoring Report*, CC Docket No. 98-202 (Data Received through May 2006) (*USF Monitoring Report*), Table 6.4, p. 6-14.

In addition, the PaPUC notes that the most recent 2007 Universal Service Monitoring Report contradicts AT&T's claim. The MACRUC Region has witnessed penetration rate declines since the CALLS Order imposed higher-cost SLCS starting in 2001. The MACRUC Region contains a significant portion of the nation's population and net contributor states to the current FUSF.

The MACRUC region witnessed penetration rate declines, most notably for end-users in the \$15,000 to \$49,999 annual income range. The PaPUC is concerned because these classes of consumers are more likely to feel the direct impact to SLC increases from the proposed reform. Pennsylvania and the MACRUC Region witnessed these penetration rate declines notwithstanding the growth in wireless service. That is because wireless service and other voice services are factored into these penetration rates.²²

The latest report shows that Pennsylvania's penetration rate declined from 97.0% in 2001 to 96.1% in 2007.²³ Penetration rates in the District of Columbia declined from 94.5% in 2001 to 92.5% in March

²² *2007 Universal Service Monitoring Report*, pp. 6-2 to 6-3.

²³ *2007 USF Monitoring Report*, Table 6-9, pp. 6-30 and 6-33.

2007. Maryland's declined from 96.0% in 2001 to 95.5% in March 2007. New York's penetration rate declined from 95.1% in 2001 to 93.0% in 2007.

Nationwide, the penetration rate decline is more noticeable at income levels below \$50,000 during the same period. Penetration rates for incomes in the \$40,000-\$49,999 range were 97.8% in 2001 and 97.0% in 2007. Penetration rates in the \$15,000-\$19,999 range declined from 93.2% in 2001 to 92.3% in 2007.²⁴ Penetration rate declines at these income levels are generally more pronounced in minority communities as well.²⁵

The PaPUC agrees that there was a decline in access rates following promulgation of the ESP Exemption. However, they are not

²⁴ *2007 USF Monitoring Report*, Table 6-10, pp. 6-40 and 6-44.

²⁵ Caucasian-American telephone penetration rate at the \$40,000-\$49,999 income level declined from 97.9% in 2001 to 97.4% in 2008. The African American telephone penetration rate at that income level declined from 97.0% in 2001 to 94.1% in 2008. The Hispanic-American telephone penetration rates declined from 96.0% in 2001 to 94.3% in 2008. *See 2007 USF Monitoring Report*, Table 6-10, pp. 6-40 and 6-44. At the \$15,000-\$19,999 income levels, the Caucasian-American telephone penetration rate declined from 93.8% in 2001 to 92.6% in 2007. The African American telephone penetration rate barely increased from 91.1% in 2001 to 91.2% in 2008. The Hispanic-American telephone penetration rates witnessed a significant decline from 87.7% in 2001 to 87.0% in 2008, virtually wiping out the .1 percentage increase in African American telephone penetration rates. *See 2007 USF Monitoring Report*, Table 6-10, pp. 6-40 and 6-44.

related as suggested by the AT&T Petition. The imposition of increased SLCs to underwrite the CALLS Order increased costs to consumers. The SLC increased dramatically in 2001, the same time period in which penetration rate declines became more noticeable. The decline in penetration rates followed adoption of the CALLS Order not promulgation of the ESP exemption. It was SLC increases that resulted in end-user rate increases which, in turn, affected penetration rates.

The fact that the SLC proposed will be capped at \$6.50²⁶ as opposed to \$10.00 under the Missoula Plan,²⁷ and even that is not certain²⁸, does not make the continued use of end-user SLC rate increases any more palatable. Perpetuation of a cost-recovery mechanism that undermines telephone penetration rates and universal

²⁶ AT&T Petition, pp. 8-9.

²⁷ *In re: Intercarrier Compensation*, CC Docket No. 01-92, Missoula Plan Filing (July 18, 2006), Executive Summary, p. 6. Thereafter, the SLC increases along with inflation. The FCC published notice of this Missoula Plan on July 25, 2006 in Docket No. CC 01-92 at DA 06-1510.

²⁸ *Compare In re: Intercarrier Compensation*, CC Docket No. 01-92, *AT&T Notice of Ex Parte* dated July 17, 2008, p. 7 (“the FCC should set an absolute cap on the amount of the SLC increase”) with *AT&T Petition*, WC Docket No. 08-152, pp. 8-9 (“This petition requests a limited waiver of the rules that prevent AT&T from increasing its SLC up to (but not above) the existing SLC caps established in the CALLS Order i.e., \$6.50 for residential and single-line business lines; \$7.00 for non-primary residential lines; and \$9.20 for multi-line business lines.”).

service is a problem, particularly when those increases underwrite reforms whose cost is determined based on outmoded and legacy copper-based network architecture.

The AT&T proposal seems to use SLCs to ensure access revenue recovery for carriers in perpetuity, particularly for rural ILECs. There is no revenue recovery for “over the top” or nomadic VoIP providers, wireless providers, or cable telephony even if they may ultimately underwrite these costs in the FUSF.

This AT&T Proposal, just like the pending Missoula Plan or the earlier CALLS Order, does not contain any assurances that access rate reductions funded by SLC increases will actually be flowed through to end-users in the form of lower long-distance rates. There is no authority given to the state commissions to ensure that end-users actually receive the benefits from access rate reductions. Moreover, the claim that the CALLS Order resulted in penetration rate increases sufficient to warrant consideration in AT&T’s proposal is simply not the case in the MACRUC Region, a region with a substantial number of the nation’s population that will ultimately experience SLC and originating access rate increases under this plan.

The PaPUC agrees that an allocation of reform costs to the FUSF warrants serious consideration if the result minimizes impacts on end-users. The problem with the AT&T Petition is that the proposal only allocates reform costs to the FUSF as a measure of last resort in the three-part funding solution. Reforms are supported almost exclusively by SLC and originating access rate increases as FUSF is used only as a last resort.

. The AT&T Petition does not propose increasing the cost burden on interstate services to support these interstate reforms. At a minimum, the FCC needs to consider increasing the costs for reform shouldered by interstate services to support interstate reforms. This may be better public policy compared to increasing intrastate rates through larger SLCs and increasing originating access rates, particularly given the penetration rate declines associated with the last CALLS reform. The PaPUC suggests that some services which warrant consideration could include interstate bundled services or special access.²⁹

²⁹ The role of special access is particularly relevant given the *Sprint Ex Parte Letter* dated August 7, 2008. Sprint outlines considerable rates of return on

In addition, the PaPUC addresses the proposal to remove the ESP exemption from access rates. Currently, access rates are not recovered by VoIP because it is, apparently, classified as a form of Enhanced Service and exempt from access rates.³⁰ The proposal remedies some alleged practice in which VoIP providers get reciprocal compensation for some calls but charge access for other calls. However, the proposal contains no detailed information or evidence showing that all VoIP providers are doing this.

If the ESP exemption was removed for VoIP, the PaPUC notes that there would still be policy disconnects between the professed goal

interstate special access in the 2005-2007 time periods. This is the same time that end-user penetration rates for narrowband voice service were declining after implementation of the CALLS Order. Compare *Sprint Ex Parte Notice* dated August 7, 2008, p. 3 and 2007 USF Monitoring Report, Tables 6-9 and 6-10.

³⁰ The *AT&T Petition* proposes to “remove” the Enhanced Service Provider (ESP) exemption from access rates for VoIP service. The *AT&T Petition* does not explain whether VoIP over a “dial-up” service will be priced on a MOU originating access rate of \$.0095 (since VoIP provided by a dial-up ISP does involve an outgoing local call if within a LATA) or if the \$.0007 rate proposed by Verizon for terminating access in Verizon’s August 6, 2008 Ex Parte filing at Docket Nos. 04-36 and 01-92 will apply (since a dial-up ISP call, even the one used for VoIP, terminates somewhere). Importantly, removal of the ESP Exemption and imposition of access for VoIP could ultimately meter advanced services like VoIP whereas a flat-rate connection charge better avoids this issue. Also, MOU metering is more a feature of copper-analog network technology not the distance-agnostic nature of fiber-digital network technology.

of achieving rate uniformity on a MOU basis and the AT&T Petition and the Two Proposals Letter. The PaPUC does not see how rate uniformity is obtained if the FCC adopts the AT&T rate for *originating* access rate of \$.0095 for VoIP calls sent in an IP-to-PSTN direction while adopting the Verizon proposal to charge \$.0007 per MOU as the reciprocal compensation rate for *terminating* access if the VoIP call comes in over a dial-up connection. Final rate proposals with different rates for *originating* access (\$.0095) and reciprocal compensation (\$.0007) are not uniform.³¹ Rate arbitrage is not addressed by adopting proposals which would resolve rate disparities through another set of different rates.

The PaPUC appreciates that the FCC, the RBOCs, and the supporting proponents are trying to quickly craft a compensation structure, particularly the need to address the federal court decision in the *Core Remand*.³² This decision apparently raises the fear that

³¹ Compare *AT&T Petition*, p. 9 (\$.0095 originating access rate) with *Two Proposals Letter* dated August 6, 2008 at p. 2, Docket Nos. Docket 04-36 and 01-92, (the Commission should establish uniform rates for *all* traffic exchange with or on the PSTN), emphasis supplied. The *Two Proposals Letter* supported by Verizon later proposes a \$.0007 ISP-bound rate as a uniform terminating rate whereas AT&T proposes an originating access rates for VoIP calls. The rates are not the same.

³² *Core Communications Notice of Ex Parte*, CC Docket No. 99-68 and WC Docket No. 01-92, Letter dated July 25, 2008, Attachment. This decision caps

further court action will “throw open the door” to renewed regulatory arbitrage by CLECs.³³ However, at this time, there is no uniform and unqualified support for the AT&T Petition or the Verizon proposal.³⁴

a ten-year dispute traceable to the ILECs’ securing a favorable compensation approach for competitors’ local calls in the ILECs’ local markets. Prior to the internet and at the dawn of local competition, a 3-minute voice call was the dominant use of the ILECs’ networks. At that time, the ILECs and CLECs disputed the compensation structure governing local voice calls. ILECs demanded reciprocal compensation at state set rates. CLECs pleaded for bill and keep. Most state commissions adopted some form of reciprocal compensation. The advent of dial-up internet calls over the ILECs’ networks turned a favorable ILEC compensation balance into an unfavorable one after the CLECs got a larger number of dial-up ISPs. The CLECs’ dial-up internet “local” calls for their ISP clients required the ILECs to pay large reciprocal compensation payments to CLECs far in excess of what the ILECs got for the average 3-minute voice call. Dial-up internet calls were far longer than the 3-minute average. Compensation was based on negotiated and state approved reciprocal compensation rates. The ILECs asked the FCC to stop “rate arbitrage” and federalize dial-up calls and the resulting reciprocal compensation. The federal court vacated two prior FCC decisions which gave the ILECs the requested relief. This mandamus and the AT&T Petition are the latest attempt to address problems arising because a benefit became a burden.

³³ AT&T Notice of Ex Parte, Docket No. 01-92, Letter dated July 17, 2008, p. 8.

³⁴ *AT&T Petition*, Docket No. 08-152, *Core Communications Notices of Ex Parte* dated July 25, 2008 and July 28, 2008 (States should set intrastate reciprocal compensation rates); *Embarq Notice of Ex Parte* dated July 30, 2008 (AT&T Petition is not good for rural carriers); *Sprint Notice of Ex Parte* dated August 7, 2008, p. 3. n. 4 (special access rates of return are significant); *In Re: Inter-carrier Compensation*, Docket No. CC 01-92, *Pac-West Notice of Ex Parte* dated August 18, 2008 (\$.0007 rate has never been cost justified by this or any other Commission); Level 3 Notice of Ex Parte dated August 18, 2008 (\$.0007 rate is above some Level 3 rates but the proposed rate should be extended to all locally-dialed ISP calls); *Feature Group IP Notice of Ex Parte* dated August 11, 2008 (Feature Group supports rate but proposal lacks the requirement that all carriers must interconnect with one another and route traffic originating on one network but addressed to another, regardless of technology and on equal terms and conditions.); *Sprint Nextel Notice of Ex Parte* dated August 11, 2008 (“Sprint Nextel supports a uniform rate but

Conclusion

The PaPUC asks the FCC to require additional information on the AT&T Petition before reaching a decision on compensation reform. The PaPUC has serious reservations with centralizing access rate-making authority at the FCC. The PaPUC is particularly concerned that local rates will increase in states with price cap regimes and approved alternative plans that contain dollar-for-dollar recovery rights for “exogenous events” or “change of law” events, or mandate intrastate access charge reforms only on a “revenue neutral” basis. The PaPUC does not support reforms that preempt Pennsylvania law, impose dramatically larger SLC burdens with minimal benefit, or undermine universal service telephone penetration rates.

The PaPUC questions the continued reliance on using an outdated MOU compensation structure designed to address the constraints of an outdated copper-analog network. The PaPUC is particularly concerned about the continued reliance on SLCs and the

rejects the notion that any carrier or class of carriers is automatically entitled to a guaranteed revenue stream to neutralize the impact of regulatory reforms”).

proposed SLC rate increases to fund reforms. The use of SLCs imposes more costs on consumers in net contributor states to the FUSF, unless the contribution base is expanded or the FCC uses other funding methods.

The PaPUC notes that the absence of any consideration for a flat-rate “connection based” approach to funding carrier compensation similar to that set suggested in the earlier NPRM. The AT&T Petition appears to abandon any use of a number-based approach as well. The proposal fails to address the rate shock, also noted in the earlier NPRM, if the FCC removes the ESP exemption.

Respectfully submitted,
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